

Serial No.: 09/884,465

IN THE CLAIMS:

Please amend claim 24 as follows.

B²
Claim 24 (Amended). A chimeric polypeptide comprising two or more polypeptides chosen from table B and/or E ; one or more polypeptides selected from table H ; and one or more polypeptides selected from table H and/or one or more polypeptides selected from tables B and/or E; provided that the polypeptides are linked as to form a chimeric polypeptide.

ELECTION

In response to the restriction requirement wherein the Examiner required restriction between the following Groups:

- | | | |
|-----------|---|--|
| Group I | - | Claims 1-16, drawn to an isolated polynucleotide; |
| Group II | - | Claim 17, drawn to a method of producing a polypeptide; |
| Group III | - | Claims 18-23, 25 and 34, drawn to an isolated polypeptide and vaccine; |
| Group IV | - | Claim 24, drawn to a chimeric polypeptide; |
| Group V | - | Claims 26-33, drawn to a method of therapeutic or prophylactic treatment wherein administering to an individual a therapeutic or prophylactic amount of an isolated polypeptide; and |
| Group VI | - | Claims 26-33, drawn to a method of therapeutic or prophylactic treatment wherein administering to an individual a therapeutic or prophylactic amount of a chimeric polypeptide, |

Serial No.: 09/884,465

Applicants elect, with traverse, Group III, including claims 18-23, 25 and 34 for prosecution in this application.

The Examiner also requires that a single sequence be elected if Applicants elect Group I, III or IV. In response, Applicants elect, with traverse, SEQ ID NO. 332 (VP94) as the single sequence for prosecution in this application.

It is respectfully submitted that Group III and Group IV should be rejoined as a single group for prosecution in this application, since the polypeptides of Group III and chimeric polypeptides of Group IV are structurally related in that the chimeric polypeptides are derived from the polypeptides encompassed by Group III. The invention lies in the identification and use of this family of related polypeptides as antigens that invoke an immunologically protective response upon administration.

Furthermore, it will not require any further searching on the part of the Examiner to examine the chimeric polypeptides when examining the group of polypeptides encompassed by group III, since the chimeric polypeptides are composed of various combinations of the polypeptides of Group III. Thus, the prior art relating to the polypeptides also relates directly to the chimeric polypeptides.

Applicants have provided an amended claim 24, which is fully supported by the specification, so that in the case that the Examiner agrees to rejoin this claim with the claims of elected Group III, prosecution of the application can proceed expeditiously.

Serial No.: 09/884,465

The Examiner also has made a requirement for election of a single sequence without identifying whether this a restriction requirement or an election of species requirement and without explanation of how or even if the sequences are considered to be patentably distinct. If this is a restriction requirement the Examiner is required to explain how the various polypeptides within the elected group are patentably distinct. Moreover, it is respectfully submitted that if this is a restriction requirement then it is improperly narrow inasmuch as the sequences encompassed by generic claim 18 are structurally related as polypeptides, antigenic fragments of the polypeptides and multimers of the related polypeptide fragments, all of which are useful as vaccines. Applicant respectfully submits that the examined claims should include, at the very least, the sequences for BVH3 and BVH11, as well as the elected sequence, VP94.

If, on the other hand, this is an election of species requirement, then Applicant is entitled to the generic claim and rejoinder of the species encompassed therein upon a finding that the elected species is patentable. Clarification is respectfully requested.

It has also come to Applicants' attention that there was a mistake in Table B as amended November 16, 2001. The correction is made to make the SEQ ID NOs. listed in Table B consistent with those in Table 13. No new matter is added by this amendment.

Applicants believes that no extension of time is required. However, this conditional petition is being made to provide for the possibility that Applicants have

Serial No.: 09/884,465

inadvertently overlooked the need for a petition for extension of time. The Commissioner is hereby authorized to charge any additional fees associated with this communication or credit any overpayment to Deposit Account No. 50-0417.


Respectfully submitted,

McDERMOTT, WILL & EMERY

Date:

Oct. 23, 2002

By:



Judith L. Toffenetti
Registration No. 39,048

600 13th Street, N.W. , Suite 1200
Washington, D.C. 20005-3096
Telephone: 202-756-8000
Facsimile: 202-756-8087